



UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

Exp dit d handling
Response after final rejection

ELMORE

Atty. Ref.: **1498-133**

Serial No. **08/981,087**

Group: **1647**

Filed: **May 27, 1998**

Examiner: **Turner, S.**

For: **TYPE F BOTULINUM TOXIN AND USE THEREOF**

* * * * *

October 5, 2001

Assistant Commissioner for Patents
Washington, DC 20231

Sir:

REFUND REQUEST

Refund of the attached \$110, one month extension fee is requested as the fee is only required due to Patent Office delay.

Specifically, the attached Second Amendment Under Rule 116 is being filed in support of the attached Request for Reconsideration of the Decision of August 5, 2001, and a one month extension fee is due for the same due to Patent Office delay in issuing the Decision prior to mailing a final Office Action.

The attached Second Amendment presents the same amendments and remarks as the Amendment filed September 5, 2001, with additional amendments to claim 8 to include an "and" to recite a more traditional Markush group, and to amend claims 13-18 and 25 to be dependent on what the applicants submit are allowable protein claims and in support of the present Request for Reconsideration of the PETITION DECISION.

The applicants traversed the restriction requirement and requested reconsideration of the same in their response of September 14, 1999. The restriction requirement was maintained in the Examiner's Action of October 7, 1999. The applicants filed a Petition under Rule 181 on January 7, 2000, for the Commissioner to invoke his supervisory authority to have the restriction requirement withdrawn. The applicants requested, in the interest of efficient prosecution, consideration of the Petition prior to further action on the merits. Contrary to the applicants request, a further Action on the merits was issued March 16, 2000. A reply to the Action of March 16, 2000, was filed June 16, 2000, which included a request for a Decision on the Petition. A supplemental amendment was filed June 19, 2000. A Status Request was filed December 19, 2000. A Notice to Comply was mailed February 27, 2001, and a Response to the Notice to Comply was filed March 27, 2001. A further Action on the merits, which is a final rejection, was mailed June 5, 2001. The Examiner acknowledged the Petition in the final Office Action and advised the applicants to contact the Examiner or Mr. Kunz if a Decision was not received **"in a timely fashion"**. A Decision on the applicants' Petition filed January 7, 2000, was mailed August 10, 2001, i.e., 18 months after filing the Petition and after the issuance of three further papers and a final rejection by the Patent Office. The Decision denied the applicants' Petition, and set a two-month period for requesting reconsideration. The attached Request for Reconsideration is being filed to again request withdrawal of the restriction requirement.


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Serial No. 08/981,087

The undersigned submits, with all due respect, that the failure of the Patent Office to timely respond to the applicants' Petition of January 7, 2000, has been prejudicial to the applicants as, at least, the applicants must now pay for a one month extension to amend the claims in support of the attached Request for Reconsideration. Had the Patent Office mailed a Decision on the Petition prior to issuance of the final rejection, the applicants would not have been required to pay for further extensions to further amend the claims. The Patent Office is therefore requested to refund the attached \$110 one month extension fee to the undersigned's Deposit Account No. 14-1140.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: _____


B. J. Sadoff
Reg. No. 36,663

1100 North Glebe Road, 8th Floor
Arlington, VA 22201-4714
Telephone: (703) 816-4000
Facsimile: (703) 816-4100

REQUEST FOR PATENT FEE REFUND

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